IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1257 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GULAM AHMED SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR. H.L. JANI A.G.P for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/06/2001

ORAL JUDGEMENT

1. Heard learned Advocate Mr. M.R. Prajapati for Mr. H.R. Prajapati on behalf of the petitioner. Learned A.G.P. Mr. H.L. Jani appears on behalf of the

respondent no. 1, 2 and 3 and learned Advocate Ms. P.J. Davawala appears on behalf of respondent no. 4.

2. In the present petition the petitioner has challenged the detention order dated 3rd February, 2001 passed by the District Magistrate, Surat under the provision of Prevention of Black Marketing Act. The respondent - State has filed affidavit in reply on behalf of respondent no. 1 dated 11th April, 2001.

3. Learned Advocate Mr. M.R.Prajapati has submitted that in the present petition various contention has been raised by the petitioner in challenging the detention order but however, he submitted that one contention is enough to vitiate the order of detention. He submitted that in the ground of detention on page 38, the detaining authority has considered the provision of Act 1955, Section 12 (AA). Mr. M.R. Prajapati has submitted that it amounts to total non-application of mind on the part of the detaining authority. On considering the aspect of alternative remedy for filing prosecution under Section 12 (AA) of the Essential Commodities Act, 1955, he also submitted that Section 12 (AA) was added in the principal Act of 1955 by the amendment Act of 1981 which was continued from time to time till the year 1997 and thereafter, the same has not been continued. Therefore, as on date there is no provision like Section 12 (AA) in the Act of 1955. Therefore considering all such Sections, while passing the order of detention it amounts to total non-application of mind on the he part of the detaining authority.

4. Learned A.G.P. Mr. H.L. Jani, appearing on behalf of the respondent no. 1,2 and 3 has submitted that the detaining authority has not filed the affidavit in reply. However, he also submitted that in the ground of detention page 38 and 39, no doubt the detaining authority has considered the provision of Section 12 (AA) for the Essential Commodities Act, 1955 being an alternative remedy, but in fact, such provision was not in existence at the time of passing the detention order against the present petitioner. Mr.H.L. Jani, learned A.G.P. has not disputed this legal position, and he fairly submits that the detaining authority has wrongly considered the relevant provision Section 12 (AA) of the Essential Commodities Act, 1955.

5. Learned Advocate Mr. P.J. Davawala appearing on behalf of the respondent no. 4 has supported the detention order and submitted that the detaining authority has passed the detention order after

considering the relevant facts and materials on record and she also submits that a legal and valid order is passed by the detaining authority where no interference of this Court is required.

6. I have heard the learned Advocates appearing on behalf of the respective parties. In the present petition very short question has been raised, which according to me is undisputed between the parties. In the ground of detention, the detaining authority has considered the provision of Section 12 (AA) of the Essential Commodities Act, 1955 being an alternative remedy, but in reality, it is amendment of 1981 which has not been continued beyond 1997. Therefore, when there is no provision in existence to make the alternative remedy available to the petitioner, the same has been considered as if detaining authority having considered the alternative remedy. Then naturally it amounts to total non-application of mind by the detaining authority. It is clear and apparent that the detaining authority has not applied the mind in respect to the relevant provision of Section 12 (AA). Therefore, looking to the ground of detention and the contention which has been raised by the learned Advocate Mr. Prajapati are not disputed by learned A.G.P. Mr. H.L Jani. It amounts to clear and apparent non-application of mind on the part of the detaining authority while passing the detention order, and therefore the detention order is required to be quashed and set-aside.

6. In result, the present petition is allowed. The impugned order of detention dated 3rd February, 2001 passed by District Magistrate Surat is hereby quashed and set-aside The detenu Shri. Gulam Ahmed Shaikh who is detained in Central Jail, Baroda as Class II is ordered to be set at liberty forthwith if not required in any other matter. Rule is made absolute with no orders as to costs.

(H.K. RATHOD,J.)

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